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REPORTS

NOTES OF THE WEEK

Action For Detention of Food by Local Authority

A case of importance to local authorities and their officers in connexion with their powers under s. 10 of the Food and Drugs Act, 1938 (now s. 9 of the Food and Drugs Act, 1955) came before the Court of Appeal on June 28. This was *Nello Simoni, Ltd.* v. *Southwark Borough Council and Others*, being an appeal from the decision of Byrne, J., in favour of the defendants.

The matter arose out of a shipment of pears from Italy to this country which were said to be infected by an insecticide. It appeared that some years ago an arrangement had been made between importers and various authorities concerned, under which it was agreed that where pears were found to be so infected the health officer could ask the importers to convey the consignment to a place where the pears could be washed or wiped, and then finally inspected by the local health officer, before they were disposed of for human consumption. Mr. Simoni was not a party to this arrangement and did not consider himself bound by it.

Part of a consignment of pears, in respect of which Mr. Simoni was not prepared to give an undertaking, was stopped, and the medical officer of Southwark decided to bring them before a magistrate under s. 10, *supra*. When the parties were before the magistrate two cases were produced and it was stated that the rest were available for inspection. However, in the words of Denning, L.J., "the parties came to a very sensible arrangement." The solicitor for the importers gave an undertaking to sort out the contaminated pears from the whole consignment, and on that undertaking it was agreed that the cases should be released to the importers, that they should sort out the contaminated pears from the uncontaminated ones, cleanse them and dispose of them in the ordinary way.

In the end the plaintiff company brought an action against the borough council, the medical officer of health and the sanitary inspector, for damages in respect of the detention of the pears during the transactions.

There was considerable legal argument about the regulations and ss. 10 and 12 of the Act of 1938, but in the result it was held that what was done was covered by s. 10.

Procedure Under s. 10

In the course of his judgment, Denning, L.J., said that the medical officer did not remove the whole 500 cases of pears, because that would have been a physical impossibility and quite impracticable but he removed two cases containing some of the worst pears and took them before the magistrate and said that the rest of the pears were ready for examination. That, said the Lord Justice, was in his opinion a sufficient bringing of the pears before a magistrate, who dealt with them. As it turned out, there was no need for the magistrate actually to inspect every pear and condemn the bad ones, because of the sensible agreement that had been made, and s. 10 was fully satisfied. He concluded his judgment, dismissing the appeal, by saying that he saw no fault in anything that the local authority or their officers did.

In delivering judgment agreeing that the appeal should be dismissed, Birkett, L.J., dealt with the question of bringing the pears before the magistrate under s. 10, quoting Byrne, J., as follows: "If a specimen is before the magistrate and the rest of it is available at some convenient place for inspection by the magistrate, that, in my view, is a compliance with the section . . . In my opinion the food is constructively before the magistrate if it is at a convenient place for the magistrate to see it, and so it was in this case."

Attempted Bribery

It is rather foolish to offer a policeman a tip, even when the occasion is some kindly help given beyond the demands of duty and when nobody could suggest that there was any unworthy motive on either side. Policemen today do not want tips, because they feel themselves above that sort of thing and because it is traditional with them to give willing service.

If there is the faintest suspicion of bribery or any possibility that an offer of money may be so interpreted, let the idea of any gift be banished at once. Bribery, or the attempt, is a serious

offence, punishable with imprisonment or fine, and may be treated as an indictable misdemeanour. Recently a man was sent to prison for three months at Preston on a charge of attempting to bribe a policeman. The evidence was that he was stopped for speeding, and offered the police officer 10*s.* to have a drink and put his note-book away. For the defence it was said that as the defendant had about 40 previous convictions for motoring offences, he got into a panic, thinking he might be summoned for more serious offences than speeding and took the foolish course that involved him in the charge of attempting to bribe the officer. The charge was no doubt made under the Prevention of Corruption Act, 1906, the terms of which are very wide, and which has probably had the desired effect of preventing many people from indulging in transactions of a questionable character, especially in connexion with business transactions.

The idea of handing a policeman one's driving licence with a Treasury note inside it, or of dropping one on the floor of the car as a strong hint to the policeman who points out an offence is certainly outworn and dangerous. It may still pass as a comedian's joke, but in real life it is likely to prove anything but a joke.

Unprofitable Offences

In their annual reports, probation officers sometimes suggest that in a few cases where probation orders are made there was really no need for that course, as the offender was not likely to repeat his offence and was not in need of either help or supervision: conditional discharge would have sufficed. Such cases no doubt swell the figures of successful probation, but probation officers are not given to making this a matter of major importance. They would rather drop such cases and have more time to devote to difficult cases.

In some instances a fine might be even more appropriate than an order of conditional discharge. If the amount of the fine is properly related to the offender's means, and if he is granted any necessary time to pay, a fine may have a salutary effect on potential offenders as well as upon the offender himself. Recently two men were fined £15 each and ordered to pay costs, for an offence of attempting to obtain 6*s.* 6*d.* by recording a false time of work. It was stated that one of them was earning £18 a week, and that his co-defendant had aided and abetted him.

With these wages, a man ought not to be tempted to commit such an offence, and the decision of the magistrates was such as to make the transaction anything but profitable. The men were spared from imprisonment, but the fine, coupled with the publicity, should prove a deterrent punishment and suffice to make others think this kind of thing not worth while.

Manners

According to *The Birmingham Post*, police in Derby have had so much insolence and bad manners from boys brought before the court that they have been given instructions to tell those appearing before the juvenile court to address magistrates as "Sir" or "Madam." One 16 year old boy, who was summoned for a traffic offence, refused to say "Sir," and when asked by the chairman how he addressed his schoolmasters, replied that he never spoke to them.

If it were only a case of thoughtless omission nobody would take the matter too seriously, although it is a pity that children should not be taught by their parents to observe the courtesy due to their elders especially to those in positions such as those of schoolmasters and magistrates. What we fear is that only too often children are told by parents not to say "Sir" to anyone, on the basis that we are all equal now and going on to show it. Equality need not breed rudeness, however, and if those who feel their position of equality so keenly wish to demonstrate it, they would do far better to emulate the good manners of those who have learned at school and at home that courtesy has nothing to do with class. There is nothing servile or humiliating in marks of respect towards others. The courts, in which Judges or magistrates are addressed by formal titles by members of the legal profession, however distinguished, as well as by officials of the court and of public bodies and police, work in so much the better atmosphere because of the courtesy generally observed.

A lad who adopts a defiant or truculent attitude towards the court does himself no good. He will not be punished for that, of course, because that would be improper except in case of a legal contempt of court. But the demeanour of the defendant must influence magistrates when, in a serious case, they are considering whether a boy needs discipline and training in an institution, or whether he can be dealt with more leniently. If his whole attitude seems to indicate defiance of the police, the court and the law, and to show no regret for his offence, the court may take all this into consideration and come to a conclusion that will be a most unwelcome surprise to the boy. They will not be so acting because they feel affronted, but because the boy has by his behaviour, coupled no doubt with reports supplied to them, shown that he needs to learn discipline and to revise his standards. In the course of this he will learn better manners.

Footprint Evidence

There have been many instances in which the print of a shoe or of a bare foot has been part of the evidence of identity in a criminal case, and it certainly has its value, but it is not likely that if it stood alone it would lead to conviction.

At the Lewes Assizes, upon the trial of a man named Malkin on a charge of breaking and entering and stealing, Gorman, J., referred to the evidence of a bare footprint, and said that this was strong evidence, but added that scientific and biological study had not yet reached the state of certainty, which might be reached in another generation.

Finger print evidence is now generally accepted as infallible, given clear impressions and skilled examination and comparison, such that the court and the jury can themselves observe the points of similarity. It may well prove that, as the learned Judge indicated, further study of human footprints may lead to classification and identification no less trustworthy than those now accepted in respect of fingerprints.

An Engineering but also a Personal Problem

According to an article in *The Yorkshire Post* of July 25 the Engineers' Guild is to make renewed efforts to persuade the Minister of Transport to try out the guild's scheme that the causes of serious accidents should be examined by professional engineers who should make recommendations for the improvements of roads and vehicles where faults in these are found to be a contributory cause of accidents.

The chairman of the executive committee of the guild is quoted as saying, *inter alia*, "road transport is mainly an engineering problem, and we believe that many, if not most, of the road accidents today are due in some measure to engineering defects in the design and layout of an out-of-date highway system."

We are not in a position to dispute the truth of this statement, but even if it is

accepted we feel that it is most important that drivers should be made to realize that it is their responsibility at all times to drive their vehicles with due regard to road conditions as they are. It is no justification when an accident has occurred for a driver to say, in effect, that he was admittedly driving too fast in the circumstances but that if only the road conditions had been different it would have been quite safe to drive at that speed. Road improvements are bound to take time, but drivers can make their contribution to road safety without any delay if they will always take care to take no risks. It is taking a risk to do in conditions which make that particular act unsafe something which in other conditions could be done with perfect safety.

This does not mean that we are not alive to the need for road improvements. Different types of surface, different types of lighting, bad cambers, blind corners and so on all add unnecessarily to the hazards of driving, and we agree wholeheartedly that the authorities should be constantly on the alert to remedy such defects. It may well be that there is merit in the guild's suggested scheme.

A Case That Went as Far as it Was Safe to Go.

In his judgment in *Evans* v. *Walkden and Another* [1956] 3 All E.R. 64 the Lord Chief Justice, referring to the case of *Langman* v. *Valentine* [1952] 2 All E.R. 803; 116 J.P. 576, said that he did not desire to be a party to any extension of the latter case, which he thought went as far as it was safe to go. He added: "We felt in that case that there were facts on which we could not have differed from the justices, though I think that we should have if we had felt able to do so."

Langman v. *Valentine* was the case in which the owner of a car was teaching a young woman to drive on a public road. She had no licence. At all material times the owner was in the front passenger's seat, he kept one hand on the handbrake and the other on the steering wheel and he was able to steer the car, stop it or start it, the ignition switch being within his reach. In these circumstances, although the girl was in the driver's seat with her feet in a position to operate the accelerator, brake and clutch pedals, the justices held that the owner was the driver of the car.

In *Evans* v. *Walkden*, a father sat beside his 15 year old son who was in the driving seat. The car was driven in bottom gear at not more than four to five miles per hour. The justices found that the steering wheel, brake and clutch pedals were within the father's reach as were the ignition switch and the gear lever on the steering column. The handbrake was on the right, out of his reach. The justices were of opinion that the father had effective control of the car and that he as well as his son was a driver of the car.

The High Court pointed out, however, that he did not have his hand on the steering wheel nor on the handbrake and was not touching any of the instruments of control, and that the case was distinguishable, on its facts, from *Langman* v. *Valentine*. There was here no evidence to justify the justices' conclusion that the father was a driver of the car.

The case concerned a charge of the use of a car without an insurance policy being in force, the policy being invalid if it was driven by someone who did not hold a driving licence.

A Poor Joke

It is fortunate that offences are often discovered by the merest accident, the results of which could not have been foreseen. An example comes from a report in the *Newcastle Journal*.

Some men employed by a motor delivery company thought it a good joke to hide a store-keeper's bottle of lemonade. Presumably he guessed it was a practical joke, and not unnaturally searched for his bottle in the men's belongings. He found a new speedometer in a man's haversack and a rear light in a man's overcoat. This led to the discovery of thefts of property valued at £250, and to the appearance of a number of men before a magistrates' court. Most of them were fined substantial sums for stealing or receiving. A harmless enough joke, if a little childish, but with serious results for the men but with the fortunate consequence that dishonesty was brought to light. This will no doubt put a stop to pilfering, so the joke will have accomplished something the jokers never contemplated.

After the Rent Acts

At the end of July a pamphlet written by two members of the Conservative Party called "Houses to Let" was published by the Conservative Political Centre, although it was not an official party publication. The pamphlet expressed the opinion that except in a few special areas a rough balance of housing supply and demand was in sight. This will be surprising to people on the waiting lists, in those large towns where such people have been told they may have to wait five years. It seemed to us to be surprising, also, that the pamphlet was warmly commended by the *Manchester Guardian*; it is true that the commendation was not on account of the opinion just quoted, but by reason of the courage of the authors in suggesting that rent control should be removed from houses with a rateable value in London or £40 elsewhere. Below these limits the authors suggested that controlled rents should be fixed by a tribunal.

The *Manchester Guardian* would prefer to use the new rateable values as a basis for calculating rents. This suggestion is familiar in substance, and it might produce less trouble in the party to which the authors of the pamphlet belong, than any suggestion of new jurisdiction for "tribunals." The *Manchester Guardian* is however sceptical about the chances of any Government's producing a Bill on the lines mentioned in the pamphlet, in a Parliament which has run half its course.

The writer prophesies that there may be a Bill within the next two years carrying further the power of increasing rents given by the Housing Repairs and Rents Act, 1954. Such a Bill would produce some hostility and provide some ammunition for the opposition party at the next general election, but would not be so acutely controversial as a Bill which cut through the accumulated anomalies of the past 40 years.

For our own part, we doubt whether even this comparatively minor Bill is to be expected in the present Parliament, and certainly we do not think any Government would be disposed to face an election after having swept away the Rent Restriction Acts.

Bus Travel for Councillors

Years ago we supported the ideas which later were embodied in the Local Government Act, 1948, of allowing local authorities to pay the expenses of members attending meetings, and to make them an allowance for loss of earnings where loss could be proved. We did so because the older law pressed hardly upon members who had no private means, and were not being maintained in office as representatives of some interest which would pay their expenses of attending. Before 1948 many employers gave paid time off to workers serving upon local bodies, whilst other such workers were reimbursed by unions or societies; on the theory that the councillor concerned himself first with the general interest, we equally did not think it right that the cost of his attending should fall either upon his employers or upon his trade union. Once Parliament

had conceded, rightly in our opinion, that every councillor's travelling expenses might be paid from public funds, it was a natural step for a local authority which owned the local transport undertaking to allow the councillor to travel with a free pass on the council's vehicles, instead of making him pay his fare and afterwards recover the amount from the council's treasurer.

Natural, but perhaps not well advised, since what it saved the councillor in paying and reclaiming fares, and the treasurer in checking claims, must have been offset by a book-keeping transaction between departments of the council. It might have been more simple in the end to let councillors pay their fares on municipal vehicles when going to meetings, as they would have to do if they went by a local train or on a vehicle belonging to a company or to the British Transport Commission.

When the Public Services Vehicles (Travel Concessions) Act, 1955, was passed for the purpose of enabling local authorities to go on giving concessions to old age pensioners, blind persons, and others, who in a particular place had enjoyed a particular privilege before the decision in *Prescott* v. *Birmingham Corporation* [1954] 3 All E.R. 698; 119 J.P. 48, the Act included a provision entitling a local authority which owned a transport undertaking to continue the giving of free passes to its members if this had formerly been its practice. The Act however, stated in so many words that the municipal vehicles might be used in this way only for the purpose of enabling a councillor to carry out approved duties as defined in s. 115 of the Local Government Act, 1948.

We are prompted to refer to this provision by receiving an extract from *The Yorkshire Post*, recording discussion by the town council of Doncaster. It seems that there are 48 members of the council of whom 47 belong to one party. The minority councillor, a woman, had raised the question of concessions for old people, and been told that these would require a local Act of Parliament. This means, no doubt, that before the Act of 1955 such concessions had not been given, so that they were not authorized by s. 1 of the new Act. She then brought up the practice which it seems the council had been following, of giving free passes to councillors marked with the words " Available at all hours," saying that passes in this form were being substituted for an older form, which was marked as available for use only when the holder was engaged on council business. The woman councillor who found herself in a minority of one said that she had refused a pass in the new form after receiving " a definite ruling from the Ministry of Transport that under s. 115 of the Local Government Act, 1948, such travel must be limited to the performance of approved duties." There is probably some misapprehension here, or at least some condensation of what was said in a letter from the Ministry, but its substance is correct enough. A note issued to councillors with the new passes said that the old wording might cause embarrassment to councillors. This would happen (we suppose) if a bus conductor or ticket inspector who knew the times of council meetings and the main committee meetings questioned a councillor, in order to satisfy himself that the pass was being used according to its terms. This is evident, but the remedy for the embarrassment is not to be found in issuing passes which seem to invite the councillor to contravene the Act. The council have the remedy for embarrassment in their own hands, by not issuing passes, thus leaving councillors to pay fares like other people and reclaim the money in due course.

Senior Officers' Salaries

The recent award to certain local authorities' chief officers of increases amounting to 7½ *per cent.* on the first £1,250 of salary and 5 *per cent.* on the balance has led to protests from some authorities. For example we read that Somerset county council approved the recommendation of their staff committee to pay salaries of up to £2,970 a year to their treasurer, surveyor, chief education officer and chief architect, only after strong opposition from some members. The opposing members argued that the state of the country's finances did not permit of increases, that they were having a pistol pointed at their heads and objected to it, and that local authority employees could not continue to expect indemnification against rises in the cost of living any more than certain other sections of the community.

We do not think that increases amounting to about £170 for each of four officers are likely to have a serious effect on the nation's finances particularly as much of each award will not go to the officer at all but to the income tax collector.

With regard to threatening weapons it was truly pointed out by another member that all authorities have agreed that the determination of wages and salaries should be contracted out to properly constituted bodies to negotiate either nationally or regionally. When the findings of these bodies are announced from time to time protests about lack of consultation with the constituent local authorities are made by a minority, but it is obvious that, in general, consultation with the constituents is impracticable. The remedy of those dissatisfied is to air their grievances at local authority association meetings: if unsuccessful there they should accept the view of the majority.

We can imagine the wry smiles of the officers when the last point about continuing indemnification against cost of living rises was made because complete indemnification has neither started nor been continued. In this respect the senior officers are less fortunate than others; for example, on February 21 last the Chancellor of the Exchequer replying to a Parliamentary question about real wages stated that the average weekly earnings of men aged 21 and over in manufacturing and certain other industries were £3 9*s.* in October, 1938, that in February, 1956 a married man with two children would require weekly earnings of £9 2*s.* to provide the same purchasing power, after tax, and that actual average earnings in April, 1955 were £10 17*s.* 5*d.* Since the date of his answer the average weekly earnings for October, 1955 have been disclosed: they amount to £11 2*s.* 11*d.* The position of senior officers is quite different. They have seen their real remuneration continuously depressed in relation to other classes and are now at least 25 *per cent.* worse off than in 1939: that is the true picture and considerably different from a presentation showing them comfortably cushioned against economic ills by " continuous indemnification " against the effects of inflation.

The cost of equitable treatment for those who carry heavy responsibilities and burdens is little enough and should not be grudged. Arbitrators seem to be of this opinion also: the agreement for the chief officers we have mentioned does not look wonderfully generous by comparison with the agreement made in May last of some 14 *per cent.* to chief constables, such agreement being linked with the arbitration award to the federated ranks.

Can a County be Too Large ?

Evidently the West Riding county council of Yorkshire is of the opinion that an administrative county can be too large for effective administration as, according to *The Yorkshire Post*, it was decided at the last meeting to agree in principle to the submission of a proposal to the Minister of Housing and Local

Government for the division of the county into two parts. This was opposed by the socialist minority and was carried by only 62 votes to 51. Clearly, however, it was proper that it should be agreed that the views of each of the 89 district councils should be obtained. It was disclosed that the decision to recommend the council to agree to the proposal was reached in committee on the casting vote of the chairman.

According to the useful returns prepared annually by the Society of County Treasurers and published in the County Councils Association *Official Gazette* there are only two county councils with a population exceeding two million, *viz.*, Lancashire and Middlesex and two with a somewhat similar population to the West Riding, *viz.*, Essex and Kent. The estimated product of a rate of one penny in the pound in the West Riding for 1955–56 was £34,571. There were five county councils where the product was much more.

There have been suggestions from time to time that some administrative counties are too small for effective and economical administration but we have not previously heard of a suggestion that any county is too large. We believe that some years ago it was suggested that Kent should be divided into East Kent and West Kent because at that time it was thought by some of the local authorities in the coastal area that they were not receiving as much consideration as West Kent in the money spent for them by the county council. This claim was never, however, seriously pursued.

FURTHER ODDMENTS FROM THE J.P.

By THE REV. W. J. BOLT, B.A., LL.M.

(Continued from p. 348, ante)

Classic statutes of the middle ages conferred on justices of the peace a precise jurisdiction over labour problems; and the "J.P." makes it clear that around the middle of the nineteenth century, this field of activity kept them busy. Today, I begin by citing specimens of the perplexities on which they consulted the editor.

At 1846, p. 302, "Servants: Labourers on canals. A carrier by canal contracts verbally to pay a man a certain sum to take a boat from B to C, there to load and bring home such goods as may be for him. The man finds the horse and harness to tow the boat. The man proceeds to C, but instead of bringing home the goods according to his instruction, he loaded the boat with other persons' goods and delivered them, and received the money to his own use. The master is desirous of punishing the man under 6 Geo. III, 25, but the magistrates hesitate to interfere. Your opinion is requested whether the magistrates will be justified in convicting under the statute in question, or whether their jurisdiction is interfered with by 4 Geo. IV, 34. Subscriber." "The magistrates cannot with any degree of safety interfere in this case, because the 6 Geo. III, 25, is to be construed in *pari materia* with the 20 Geo. II, 19, and the 4 Geo. IV, 34; and under these the judges have held that there must be a contract to serve, not merely to do a specific piece of work or a job, and also that the employ must come within the description of some one of the occupations specified in the Acts, and the person in the case mentioned does not seem to do so. He is not a keelman, we apprehend, as that word has a local sense, and does not apply to canal carriers generally."

So at p. 268, "Servants; minors. As the Act 4 Geo. IV, 34, prescribes a punishment for apprentices who may be convicted of having misbehaved or neglecting to fulfil their engagement, permit me to ask whether servants in husbandry under the age of 21, in the event of their misbehaving, are under this Act liable to similar punishment ? J.P." "We cannot recommend our correspondent to deal under 4 Geo. IV, 34, with servants who are minors, for offences made cognisable by justices under that Act, or indeed under any other of the Acts relating to servants and artificers. Till the judges are more explicit on the point, the justice exposes himself at least to the risk of an action by so doing."

At p. 827, "Servants; neglect of duty. HB solicits employment of RM, who is an innkeeper, as ostler to his inn, and is taken into RM's service. It was agreed and understood in conversation between them that HB should have the ostler's fees in the yard, and should be boarded and lodged in the house for his services. HB, after being in RM's service three or four months, absents himself without his master's consent, leaving the inn yard without any person to take charge of it. Can a magistrate adjudicate in this case, and cause HB to be brought before him for neglect of duty ?" "Magistrates have certainly no power to adjudicate in this case. There appears to be a contract to serve, but the servant must be either a servant in husbandry or an artificer, handicraftsman, miner, collier, pitman, or potter; and an ostler is obviously neither of these. The statutes include the words 'labourer or other person,' but it will not be safe to include an ostler under these general terms."

The uncertain extent of parental rights occasionally clouded the issue, as at 1847, p. 94: "Servants in husbandry; minors. JW aged 17, having lived with his father all his life, went at Michaelmas and let himself to a farmer living in another parish for a year, without his father's consent. He took his clothes with him and entered upon his servitude. The father wishes to take his son away and to have him home. The son is also desirous of returning home but the farmer refuses to allow him and, in order to prevent him going, keeps his clothes. Has the farmer the power of keeping the lad, or can the father by any process of law or justice, get his son away ? *Fiat Justicia.*" "This is a question now standing for argument in the Queen's Bench case *In re James Lord.* Our own impression is that an infant can bind himself to serve for a year in husbandry without his father's consent, and that the farmer can take him before the justices under 5 Eliz. 4 in case of his not performing his duty. That he may bind himself without his father's consent as an apprentice was decided in *R.* v. *Arundel*, 5 M. and S. 257 and in other cases cited in 1 Burn Inst. 182, 29. In 2 F.N.B. 168, it is laid down that an infant of 12 years of age shall be bound by his covenant to serve in husbandry or otherwise, provided the binding be entered in a legal manner, to the validity of which we do not consider the father's consent at all necessary."

A common difficulty in apprenticeships was that raised at 1846, p. 380. "Apprentices; commands of master; what are lawful and reasonable. AB is bound apprentice to CD to learn the trade of joiner and carpenter. The indenture contains the usual clauses and states that the apprentice shall do the lawful commands of the master. The apprentice has frequently milked the cows and assisted in working the land and garden, but has recently refused to do so any longer, and contends that he is not bound by his indenture to do work of this description which has no reference to his trade. The master contends that such occasional labour he is bound to perform as his master lawfully and reasonably commands, and has summoned the apprentice before the magistrates to answer the charge of disobeying his orders. Your opinion is requested whether the apprentice is

bound by his indenture to do the occasional labours required of him, as the lawful commands of his master. T.B."

Another common type of grievance is explored at 1846, p. 618. " Apprentices; duty. A was apprenticed to B for the term of seven years, of which four years remain unexpired. B has his shop open at 6 *a.m.* and has it shut at 8 *p.m.*, at which time B's shopman leaves the premises and returns at 10 o'clock, being a space of two hours. Could A as an apprentice insist on having the same time allowed for him ? Subscriber." But the law was merciless. " A cannot so insist. He must keep his master's hours if they are reasonable, and those mentioned are not unreasonable, at present, at least. They may become so if and when all the world does otherwise."

One magistrate's view of the state of these laws is expressed in a letter at 1846, p. 619. " Agreeably to your caution, I seldom venture to meddle with those ill-defined statutes 20 Geo. II, c. 19 and 4 Geo. IV, c. 34; but although I think it is pretty clear that a labourer working for a builder at 2*s.* 6*d.* a day comes under the said Act, still I dare not receive a complaint from this master for misconduct on the part of the labourer, absence from work and very abusive language, without being informed by you that such a case comes within the Acts above cited."

The " J.P." richly illustrates the practical difficulties which forced the legislature to create a new system of highway administration. Here are a few concrete problems which were causing harassment in the 1840's.

At p. 398 of 1846, " Highways; non-payment of tolls. By 3 Geo. IV, c. 126, s. 41, if any person shall fraudulently or forcibly pass through any tollgate with any horse, etc., he would be liable to a penalty not exceeding £5, and by s. 139, a penalty of not exceeding £10 is imposed for passing any turnpike gate or gates, rail or rails, chain or chains, or fence or fences, without paying the toll appointed to be paid at such ' gate or other fence.' AB passes on a road where a chain only is placed and at which toll is collected. He refuses to pay, and his attorney contends that he is not liable to be convicted under either of the above sections. Your opinion will oblige. Scrutator." " We would not by any means give currency to quibbling or equivocating, but, for this case, we really consider a conviction cannot take place. It is an omission which cannot be supplied by the obvious intentment of the legislature. The chain is not a gate, and the words ' or fence ' cannot include a chain when it has been mentioned in the way here."

A similar difficulty of interpretation appears at p. 398. " Highways: toll, caravan, wagon. A case occurred a short time ago before magistrates in petty sessions in Lancashire, wherein a collector of tolls on a turnpike road was charged with having demanded and taken a greater toll than he was legally authorized to do. The facts are these. AB, a person who travels from town to town throughout the kingdom, exhibiting to the public certain waxwork figures, which he conveys in such sort of carriages as are generally called caravans. These are large four-wheeled carriages constructed with springs, and the fellies of the wheels are 3 *in.* in length. One of them was drawn by three horses, another by two, and the third by one horse. The weight of the largest does not exceed 67 *cwt.*, but no question was raised in regard to weight, but simply what the carriages should be termed, whether caravans or ' wagons, wains, or other such like four wheeled carriages.' The collector has however demanded and taken tolls for the latter class of carriage, and contended that he was right in so doing; and produced a copy of a table of tolls as adopted at the gate of which he had charge. The following are extracts from the table, which are the foundation for his payment in such cases. ' For every horse or every beast drawing any coach, stage-coach, diligence, caravan, sociable, berlin, landau, chariot, vis-a-vis, barouche, phaeton, chaise, marine, calash, car, curricle, gig, whiskey, horse-litter, and other such-like carriage, the sum of 4*d.* For every horse or other beast drawing any wagon, wain, or other such like four-wheeled carriage, having the fellies of the wheels of less breadth than 4½ *in.* at the bottom or soles thereof the sum of 9*d.*' The magistrates decided against the collector, and I should be glad of your opinion, as well for their satisfaction as well as for the trustees of the road."

Difficult issues arose on the application of the exemption from toll which was enjoyed by *bona fide* ministers of religion in the exercise of their duties.

So at 1846, p. 476. " Highways; turnpike toll. A chemist and druggist who occasionally preaches in dissenting chapels, went last Sunday to a chapel six miles from his home, in his own gig, and on his way had to pass through a tollgate at which he claimed exemption from toll. The toll collector demanded the toll on the ground that the chapel to which he was going was not the usual place of worship of the above chemist and druggist, as he does not attend the above chapel twice in the year. Your opinion will greatly oblige. J.W." " The chemist and druggist was certainly liable. There is no pretence for calling the chapel referred to, his usual place of religious worship, and ministers of dissenting chapels, or persons officiating as ministers, are not as such exempt as rectors, vicars, and curates are when going on any religious duty."

A query at p. 636 of 1846 reflects the wide agitation that was disturbing the nation about the use of dogs as beasts of burden.

" Highways; turnpike toll. Can tolls be demanded for dogs drawing carriages? In one class of the Act (a local one), are the words, ' Every horse, mule, and other beast drawing, etc.,' and in another clause, ' for every carriage of whatever description and for whatever purpose, which shall be drawn, or impelled, or set or kept in motion by steam or by any other power or agency than being drawn by any horse or horses, or beast or beasts of draught or other animal power.' An Old Subscriber." " Toll cannot be demanded under this or any of the general Acts, for dogs drawing, we think. Dogs are not *ejusdem generis* with horses and mules."

The supervision of itinerant merchants is not so prominent an anxiety to magistrates as it was a century ago. In 1864 (p. 746), the current law was thoroughly explored. " Hawkers and pedlars. Sellers at feasts in stalls. A party was summoned under 50 Geo. III, c. 41, for going from town to town selling children's fiddles and other toys without a hawker's licence. The defendant by his attorney, claimed a right to do as he had done in this case, under the section of the Act which excepts, ' Persons selling or exposing to sale any sorts of goods, etc., in any mart, market, or fair legally established.' The defendant lived in the parish of I, and was in the yearly habit of going to the adjoining town of C, on the day which is called the feast, being the day laid in the information and which is held annually in the village of C, in the same way as wakes, fairs, etc., and was held in other places for amusements and the sale of confectionery, toys, etc.; and he there at the usual place, kept a stall for the sale of fiddles, toys, etc. The informer's witness on cross-examination proved that the feast had been established and held in the way it then was, by parties keeping stalls there for upwards of 30 years; and another witness called by defendant proved the like for upwards for 40 years. The attorney for defendant contended that it came within the meaning of the term ' fair,' and if not, was certainly within the meaning of ' market,' which was defined by lexicographers to be a place where articles are publicly sold, and that if the bench had any doubt as to this, the statute being so highly penal, the defendant was entitled to

the benefit of such doubt. (1) Your opinion is therefore requested whether in these circumstances, the defendant was justified in keeping a stall, and exposing for sale or selling, toys, etc. (not his own manufacture), without a hawker's licence, (2) whether you think that the defendant went from town to town within the meaning of the Act, he having only gone from his own house to the town of C in the adjoining parish of C, (3) whether, as a benefit claimed of right to do the Act complained of was set up by defendant, the magistrates would have any jurisdiction in the matter, as thereby they would be deciding an intricate question of law."

Rights of market were still a source of frequent litigation; and I quote the headnote of a case in 1846 at p. 424. " *Lockwood* v. *Wood*. The market of Easingwold was granted in 1639 by Charles I, with all tolls and privileges to H, his heirs and assigns. By indenture dated 1646 between H on the one part, four persons herein named, described as all of E, yeomen and by-law men of Easingwold on the other part; after reciting the charter of 1639, the four by-law men, in consideration of the charges H had been at in procuring the said market, granted to H the courthouse with the waste adjoining the market place, together with the market place in Easingwold. H covenanted in the same deed that the four persons and the inhabitants aforesaid, their heirs and assigns for ever, should have a free market in Easingwold, toll-free. In an action of debt for stallage, brought by the plaintiff claiming under H against defendant an inhabitant; held, that the non-payment of tolls by the inhabitants since 1646 was not, in the absence of any proof of the existence of a market prior to 1639, evidence of their exemption from stallage by immemorial usage."

ENGLISH LOCAL GOVERNMENT—ITS APPLICATION IN THE COLONIAL FIELD

By ELLIOT FITZGIBBON, O.B.E., M.A., B.A.I., M.T.P.I

The operation of planning control in England and its relation to the Rule of Law has for some time been under critical examination in England, and some incidental illusions and misconceptions have been exposed. That some of the unhappy conditions at home might have had, and may still have, far-reaching and regrettable consequences in distant parts of the world can hardly escape the observation of anybody, civilian or public servant, with any serious knowledge or experience of, or interests in, our far-flung Colonial Empire; and it is the purpose of this article to clarify some of the issues in that particular context.

It would be serious enough if evils that arise could be confined within the shores of this country; but unfortunately they cannot. A great Company of Nations looks to England for guidance and precedents in the application of social and political philosophy, feeling sure that the hard-earned experience and the wisdom of a thousand years of legislation, administration, and government evolution must have produced charts with safe courses to follow past the rocks and reefs and shoals on which only too many ships of state have perished in the past. But before any workable system of planning control could be engrafted, whether good, bad, or indifferent, on a Crown Colony machine of public administration, a competently designed system of local government must first be introduced and be got into smooth and automatic working order.

That the establishment of an efficient system of local government is an essential step in the development of all Crown Colonies is a proposition which is hardly liable to evoke dissent, having regard to the oft-declared policy that responsible government is the ultimate goal for nearly all of them. But that the want of such a system may at this date be a real factor, in the production of political discontents and financial embarrassments, may not be so apparent.

Local government in England is an older institution than Parliament. It is the earliest historical expression of the national appetite for autonomy which is so deeply rooted in all Anglo-Saxon communities, which has emerged with renewed strength in the conception of " Dominion Status," and is now recognized in all its fullness in the Statute of Westminster.

The history of this evolution is deeply interesting, not least in the synthesis which has emerged from the centuries-old antithesis between the authoritarian element introduced by the Norman Conquest, and the principle of local autonomy which up to then had prevailed, and at no time thereafter has ever been submerged.

It is to this Anglo-Saxon instinct for autonomy—for freedom from all outside interference in domestic affairs—that much of the restiveness and impatience of several colonial communities is at bottom due, whatever may be the economic or other incidental pretexts for threats or manifestations of violence when these occur, and whatever may be the different causes for similar manifestations in other Colonies or dependencies which are without settlements of Anglo-Saxon stock.

Now, that such political restlessness could be allayed, or be provided with a natural outlet, by the institution of properly established local authorities, seems to be self-evident; and that such a system would provide the most wholesome and natural means of political and administrative education for such communities, in preparation for the ultimate goal of responsible government, seems to be no less obvious.

But a mere outlet for restless emotions is of itself of no benefit to the immature, if the element of appropriate education is not at the same time supplied; and the element of education cannot be supplied without teachers. It is not the education of Sam Weller—to be turned out into the streets to meet and solve the problems presented by the world at large for himself—that is appropriate in this matter. The collaboration of properly qualified mentors is of the essence of the remedy; and it is true to assert that without this the remedy may be worse than the disorder. In short, it is not safe in this age of rapid change for any colonial community to be embarked on the adventurous sea of political evolution without a trained pilot, and a crew accustomed to handling the various parts of the vessel.

It is superfluous to describe here the qualifications necessary in officers appointed for the establishment of a system of local government; they are understood by everybody with any knowledge or experience of the subject; suffice it to say that special knowledge and experience in this field of public affairs is essential, and, if the newly-established system does not include provision for specialist legal advice, that the chief

administrative officer should himself possess legal qualifications and experience of the necessary kind.

But while the importance of these considerations is axiomatic to people who are informed on the subject of local government, they are not appreciated by others, on account of the general public ignorance concerning local government, its mechanism, the principles upon which it rests, its long history of evolution, its place in the British Constitution and its relations to public and private rights, liberties, and property.

Owing to this condition of public ignorance the community in any Colony, where domestic affairs have hitherto been regulated by means of Rules and Orders promulgated by the Governor, are prone to assume that Local Government means no more than devolution of powers and authority by the Governor to themselves; and that for this purpose there is no more knowledge or experience required than that of the man in the street, with some little assistance (as little as possible) from the administrative officers by whom the old rules have until then been administered.

Unfortunately this illusion is apt to receive support from the Central Government itself, if the idea is countenanced that a local government system can be directed and controlled as a mere branch or sideline of the normal colonial form of administration, unaugmented by officers who, having specialized in local government administration, law, and finance, and in the control of subordinate legislating powers of byelaw-making and planning control, are able to speak with authority on the technical problems which require to be dealt with from day to day.

There is reason to believe that these vital considerations have never been fully appreciated by the Colonial Governments, nor by the Colonial Office; with the result that systems of local government in the Colonies are directed as mere sidelines of the Central Government's ordinary responsibilities, to be discharged by any officers of the Colonial Service who may be selected for the purpose, with such technical advice as may be available, from the Treasury in financial matters, the Attorney-General in legal matters, and the Director of Public Works in engineering matters.

It is not yet generally understood that municipal administration, finance, law, and engineering are all specialized branches of those subjects, which cannot be committed to officers devoid of specialized knowledge and experience, without the risk of disastrous consequences.

For many years before the establishment of municipal local government, colonial domestic affairs are regulated by Rules made under powers conferred by various Acts on the Executive. Such powers are, to all intents and purposes, unrestricted, and are generally exercised by the promulgation of Rules drawn in terms which confer discretionary power on the officers responsible for the good order and management of townships and districts, and for the public health and safety therein. This autocratic control under Rules made in virtue of unrestricted powers is inevitable in the early stages of a Colony's development, when an enormous area is controlled in all details by the Central Government; but in the course of time, when local communities have come into existence as recognizable local entities, with both the capacity and the urge to manage their own local affairs, the need for autocratic powers disappears. Discretionary powers in the early years are to a large extent (perhaps wholly) necessitated by attenuation of personnel in the public service; but this plea is no longer valid where local communities have acquired, by density of population and other factors, the ability to manage their own local affairs. When this stage has been reached the powers of subordinate legislation, when granted, must be restricted to clearly defined purposes and confined within certain well-established limitations.

If no elected legislature has the right to delegate unrestricted powers of legislation to any other body, much less can Colonial Legislatures do so, since they do not themselves exercise unrestricted legislative powers. Yet the situation under a newly established system of local government may, in practice, be equivalent to such a delegation of unrestricted powers to the local municipal authorities.

This is a serious matter when it is considered that any devolution of legislating power must involve some measure of derogation from Her Majesty's reserved powers of disallowance; for the subordinate legislation of local authorities has the same effect as Acts of the Legislature, but is not submitted to the Secretary of State, as such Acts have to be, before they can receive the force of law. The seriousness of this is increased by the consideration that much of such subordinate legislation creates crimes which are punishable by penalty, and so becomes a part of the criminal code of law.

Such a development is so fraught with dangerous consequences, and the delegated powers are so open to abuse, that it is advisable to draw attention to some details of this aspect of the matter:

The principal considerations which need to be borne in mind are:

(i) That any newly established colonial system of local government is probably, in essentials, the English established system.

(ii) That the powers of subordinate legislation of local authorities created thereunder are therefore restricted by the same theoretical considerations and are therefore only exercisable within the same limitations as such powers are in England.

(iii) That the definition of " byelaw " and the tests of validity must be the same for byelaws made under any colonial system as for byelaws made in England.

(iv) That old " rules made by virtue of the unrestricted rule-making powers of the Governor, and which in the early stages of local government are carried forward by saving clauses in new local government Ordinances, are only valid as byelaws so far as they are *intra vires* the powers conferred by these Ordinances.

(v) That the approval of subordinate laws by the Central Government is in its essence a judicial function designed to protect individual rights and liberties from unlawful invasion, and to guard against both usurpation and abuse of powers by the local authorities.

It is necessary to have regard to the possibility that, in the transition stage from Central Government control to local government, the new local authorities may be tempted to impose restrictions on individual liberty and legitimate enterprise designed to simplify their own work by undesirable or improper use of lawmaking powers. But inexperienced local authorities in Colonial conditions may tend to make bad laws for other equally bad motives; and the onus of asserting fundamental principles may be heavily placed on private citizens. The rectification of bad laws is left to the initiative of aggrieved persons, who are not usually in a financial position to take the risks of litigation against public authorities; while colonial magistrates, who try most of the offences under byelaws, are not usually equipped with the necessary knowledge or experience to entertain any defence based on a plea of invalidity.

Now there are fundamental differences between the control exercised by a local authority in the making of *Regulations*, in

the exercise of *Discretionary Powers*, in the making of *Byelaws* and in the making of *Town Planning Schemes*.

Regulations (where the word is not used to mean the same as byelaws) have legal effect for some limited purpose, are not enforced by penalty, and do not require confirmation by the Central Government. This form is not as a rule specifically provided for in local government legislation. There are objections to it which need not here be considered in detail; suffice it to say that "Regulations" place a heavy responsibility on the issuing authority which only the most elaborately equipped authorities, with considerable financial resources, would be able to bear.

Discretionary Powers, if conferred on a local authority by general or local Acts of the central legislature, are, when granted, unfettered by definite rules and are essentially uncertain in their operation. For example, such a power may require that something must be done "to the satisfaction of the local authority" (or of one of its officers) or that it must be done in accordance with some specified rule "unless the local authority (or one of its officers) otherwise allow." Both these forms are inadmissible in any byelaw which is not made under some special law in which such discretion is specifically allowed; or where, in the nature of the case, such a form is clearly essential, and the byelaw (being otherwise valid) could not be worked without it. But wherever in the latter case such a provision might create uncertainty as to what is or is not to be done under the byelaw, the byelaw could be quashed by a court.

Byelaws are the common and most necessary method of subordinate legislation under a system of local government. The essential features of this method are:

(*a*) Byelaws apply only within the area of the local authority making them.

(*b*) The local authority can at any time repeal or amend them.

(*c*) It is the duty of that local authority to enforce them, and anybody aggrieved by a breach may do so through the courts.

(*d*) They must be strictly limited to the scope authorized by the Legislature.

(*e*) They must be confirmed or approved by the Central Government.

(*f*) They must be published for objections before being submitted for approval of Government.

(*g*) They may, after approval, be challenged in and quashed by the courts.

As stated in every text-book on the subject a byelaw must be *intra vires*, certain, reasonable and not repugnant to the general law. The essential nature of a byelaw as determined by these factors therefore is: that it should state as clearly and definitely as the subject permits, strictly within the powers under which it is made, and with a not unreasonable exercise of those powers, that a certain thing is, or is not, to be done.

WEEKLY NOTES OF CASES

HOUSE OF LORDS

(Before Lord Morton of Henryton, Lord Goddard, Lord MacDermott, Lord Keith of Avonholm and Lord Somervell of Harrow)

WEST SUFFOLK COUNTY COUNCIL *v.* W. ROUGHT, LTD.

June 18, 19, July 25, 1956

Compulsory Purchase—Compensation for disturbance of business—Loss of business profits—Consideration of sum payable for income tax if profits had been earned.

APPEAL from order of the Court of Appeal (1955) (119 J.P. 433).

Premises occupied by a manufacturing company under a lease were compulsorily acquired by the local authority. The company was unable to find other premises for a period of nine months, and lost three beneficial contracts. The acquiring authority contended that, in assessing compensation under rr. 2 and 6 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, income tax to be paid by the company on the profits from those contracts must be taken into consideration.

Held: in assessing the amount to be awarded for temporary loss of profits the element of the liability of those profits to tax must be taken into account and a deduction made accordingly.

Appeal allowed.

Counsel: *Geoffrey Lawrence, Q.C.*, and *Ranking* for the appellants; *Gilbert Paull, Q.C.*, and *Chavasse* for the respondents.

Solicitors: *Sharpe, Pritchard & Co., for A. F. Skinner*, Bury St. Edmunds; *E. P. Rugg & Co.*

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Collingwood, J.)

July 16, 1956

PRACTICE NOTE

BOULTON *v.* BOULTON

Husband and Wife—Maintenance—Enforcement of order—Appeal—Procedure.

An appeal against an order or determination by justices for the enforcement of an order for payment by a husband for the maintenance of his wife under the Summary Jurisdiction (Separation and Maintenance) Acts lies to the Divisional Court of the Probate, Divorce and Admiralty Division by way of Case Stated under the Magistrates' Courts Act, 1952, s. 87, and not by notice of motion pursuant to r. 71 (2) of the Matrimonial Causes Rules, 1950.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

BERKSHIRE FINANCES, 1955–56

The population of Berkshire is now 325,000 having increased by 100,000 since 1939: the rateable value at March 31 last at £2½ million had increased by nearly £1 million over the same period.

These figures are given in the promptly published financial statement prepared by county treasurer Mr. W. S. Hardacre, F.I.M.T.A., A.S.A.A.: the accounts and unit costings he submits again evidence that Berkshire is economically administered.

Expenditure totalled £5,700,000 of which the education service required £3,100,000. Costs of educating pupils were approximately £30 in primary schools, £41 in secondary modern, and £64 in secondary grammar schools. Four special schools are maintained and two make provision for boarders: at these boarding establishments cost per child per day was approximately 21*s.* Three hostels for maladjusted children are also provided: in these cases costs range between 25*s.* 4*d.* and 19*s.* 2*d.* per child per day.

The Education Committee also provide an Institute of Agriculture at which the annual average cost per student (there were 42) is £485, including £108 for capital repayments. Investigations into the costs of some institutes are now being made by the Ministry of Agriculture and Fisheries.

Berkshire does not believe in maintaining large working balances and the budgetted reduction of balance duly occurred during the year: at March 31 the credit balance was £201,000, and was more than covered by revenue cash in hand and temporary loans to district councils.

Two hundred and fifteen advances for housing have been made, of which 30 were advanced during the year, a reduction of 20 as compared with 1954–55: total outstanding at March 31 was £267,000. Staff housing accommodation has also been provided: during the year rents were insufficient to meet loan charges and other expenses, the deficit of £1,500 being charged to rates.

The council provide a staff canteen (net charge to rates £800), staff sports ground and 24 staff cars (a payment for private user being made).

The superannuation fund caters for 2,400 contributors of whom 1,300 are county council staff, the remainder coming from a considerable number of admitted authorities of various types. Up to the year under review very few internal investments had been made, loans to the county council amounting only to £52,000 out of total investments of £1,500,000. Average rate of interest earned was 3½ *per cent.*

Gross loan debt has risen almost 10 times since 1938–39 and at March 31 totalled £3½ million equal to £10 15*s.* 3*d.* per head of population.

Considerable use is made of sitting case cars and the hospital car service to fulfil the obligations of the ambulance service. The number of full-time driver/attendants at the end of the year was limited to 31 and the total of ambulances and sitting case cars provided by the council was 41.

Berkshire, unlike some police authorities, has no serious shortage of policemen: the authorized strength is 440 and average daily strength throughout the year was 417. The cost per police officer was £1,120 but with the pay increase of December last and the granting of retrospection in addition this cost must increase substantially.

INDISCRIMINATE SALE OF SPECTACLES

The attention of the Association of Municipal Corporations has been drawn to the practice of certain multiple stores who are again offering spectacles for sale over the counter, without any proper eye tests being carried out. This practice—prevalent before the war—seems to have been resumed since charges for spectacles were imposed under the National Health Service. It is not known how far the imposition of these charges is discouraging the use of the ophthalmic services, but it was suggested to the association that the sale of spectacles without eye tests was a harmful practice and one which might prevent early diagnosis and effective treatment of serious conditions of the eye. According to the *Municipal Review* this matter had already been the subject of representations to the Minister of Health by the North Regional Association for the Blind who had been informed by the Minister that he did not possess evidence of harm being caused by such sales as would justify prohibitory legislation. It was pointed out further by the Ministry that, except for minor alterations in the prices of frames, charges under the service had not changed since 1951, and that the substantial increase in the use of the supplementary ophthalmic services made it difficult to regard the charges as a serious deterrent to use of these services. After considering the matter in its various aspects the health committee of the Association of Municipal Corporations reached the opinion that the indiscriminate sale of spectacles should be prohibited and the Ministry of Health have been informed accordingly.

Similar representations were made to the County Councils Association. As, according to their *Official Gazette*, they had no evidence to suggest that harm is caused to people's eyes by spectacles bought over the counter the Faculty of Ophthalmologists were asked for their views. A reply was received that no evidence of scientific value was forthcoming that the use of glasses bought indiscriminately could damage the eyes.

VOTING BY COUNCIL TENANTS

It was suggested in the House of Commons last February that there was considerable uncertainty among councillors, who are tenants of council houses, about the scope and effect of s. 76 of the Local Government Act, 1933, which debars members of local authorities from taking part in the consideration or discussion of, or from voting on, any question in which they have a pecuniary interest, direct or indirect. The Minister of Housing and Local Government was asked accordingly whether he would seek an amendment of the law so that they know, without difficulty, on what matters of general council policy and administration they can speak and vote; and whether he would agree to an amendment of the law, so that councillors who are tenants of council houses may vote on proposals for a scheme of differential rents or of rent rebates or on changes in the level of rents relating to council houses as a whole or to any substantial group of council houses.

The Ministry have now issued Circular No. 30/56 in which it is pointed out that the question whether disability exists in any particular case, or class of case, is a matter in the first instance for the individual councillor, and in the last resort for the courts. The Minister is, however, advised that a member who is a tenant of a council house would be debarred from taking part in proceedings at which questions relating to council house rents are considered. He is empowered by the statute to remove a disability in any case in which the number of members of the local authority or the committee so disabled at any one time would be so great a proportion of the whole as to impede the transaction of business; or in any other case in which it appears to him that it is in the interests of the inhabitants of the area that the disability should be removed.

The policy normally followed by successive Ministers has been to allow councillors who are tenants of council houses to vote on questions affecting rents only where half or more of the members would otherwise be disqualified. It is agreed in the circular, however, that circumstances may be such that the inability of even a small proportion of members to vote might possibly lead to the adoption of a policy to which the majority of a council were opposed. Where such a situation is anticipated the Minister would be prepared to give sympathetic consideration to an application for the removal of a disability to vote on issues affecting rent policy, provided that such application is supported by a resolution of the council and accompanied by a note explaining the circumstances. If asked to do so, the Minister would also be prepared to remove any disability for discussion and voting on any such resolution. It is explained, however, that nothing in this circular will prevent a councillor from applying direct to the Minister for the removal of a disability either to speak and to vote or to speak only. Such applications should normally be made through the clerk of the council, who should fully explain the circumstances. Where the application is for relief of a disability to speak only, the Minister will, as hitherto, normally give his consent where issues affecting rent policy are concerned.

ROAD CASUALTIES—MAY AND JUNE

The provisional figures for road accidents in Great Britain for June show a reduction of 433 in the total number of casualties when compared with the figures for June, 1955. The provisional totals for the first half of 1956 however show an overall increase of 7,842 or seven *per cent.*

In June casualties totalled 23,864, including 446 deaths and 5,155 cases of serious injury. Compared with the final figures for June, 1955, there were nine fewer deaths and 181 fewer cases of serious injury. The provisional total of deaths in road accidents for the first six months of 1956, however, was 2,447, an increase of 151 or seven *per cent.* over the total for the same period of 1955.

The final figures for May, 1956, were 458 killed, 5,587 seriously injured and 19,015 slightly injured; the total of 25,060 exceeded the total for the previous May by 1,410 or six *per cent.* Casualties to children, mainly young pedestrians and cyclists, totalled 5,322, an increase of 370.

The increase in road casualties was most marked among motor cyclists and their passengers. The May total of 6,794, including 108 killed and 1,883 seriously injured, is 19 *per cent.* higher than the corresponding total of 5,701 for the previous May. Police reports show that the most common causes of accidents in which motor cyclists were involved were excessive speed having regard to conditions (412 accidents) and overtaking improperly (364).

COUNTY BOROUGH OF SOUTH SHIELDS: CHIEF CONSTABLE'S REPORT FOR 1955

During 1955 the South Shields force lost eight of its members and gained nine new recruits. The chief constable did not accept one applicant who wished to transfer to the force as " I do not favour strengthening one force at the expense of another without good reason." The result of the net gain of one during the year left the figures at the end as follows: establishment, 156; strength, 149. Although there were another seven vacancies to be filled only seven of 51 male applicants could be accepted, 21 being below the required physical standard and seven others below the educational standard. Ninety-nine of the 149 members of the force have not more than 10 years service.

As an odd item of police training we notice that in February and March, 1955, 119 members of the force attended a one day course on " rescue from crashed aircraft." There seems to be no limit to the multiplicity of matters of which we expect the police to have some special knowledge so that, in an emergency, they can come to the aid of their fellow citizens.

The special constables number 146 (authorized establishment 300) and during the year they worked on patrol beats for short periods about once per month and gave valuable help on various special occasions. Their total hours of duty were 1,981.

The police had to investigate 1,196 allegations that crimes had been committed and of these 152 were not accepted as crimes. In five other cases children under eight were responsible and in 40 cases vehicles were taken without the owners' consent. This left 999 accepted indictable offences. With a surprisingly high detection rate of 78·97 *per cent.*, 789 of these offences were detected, and as a result, 144 adults and 81 juveniles were prosecuted. Fifty-seven other adults and 133 juveniles were cautioned. Of the 789 detected offences 554 were committed by adults and 235 by juveniles. The 81 juveniles who

were prosecuted were responsible for 29·78 *per cent.* of the detected crimes. In 1954 119 juveniles were charged.

In his comments on juvenile offenders, the chief constable suggests that an excess of pocket money, rather than the lack of it, appears to be the cause of some juveniles appearing before the courts. They are given too much money, and it is given too much as a matter of course, with the result that if for any reason the supply of money to which they are accustomed fails they resort to crime rather than be without their usual amount of money. He suggests that children would appreciate much more something given occasionally as a concession (possibly as a treat or reward for something they have done) than they do something given regularly which they come to look on as their " rights."

It is refreshing to find a report which is able to record fewer accidents in 1955 than in 1954. The South Shields figures are 232 and 239 respectively. There were, unfortunately, more persons killed and injured it being so often a matter of chance whether an accident results in injury or death and, if so, how many persons are the unfortunate victims. One reason for a reduction in the number of accidents is thought to be the erection of " no waiting " signs in certain streets. Experience has shown that not only have these led to a freer movement of traffic but also the number of accidents resulting from persons crossing the road masked by vehicles has decreased, the 1955 figure in this group being 19, compared with 26 in 1954. We know that it is claimed by some that many accidents attributed in police reports to some fault on the part of a pedestrian are really due to a driver's error or lack of consideration, but we think that the police take great trouble to arrive at a sound conclusion in these matters and we see no reason to assume that their returns are not to be relied upon. They would not pretend that it is always easy to be certain of coming to the correct conclusion on such a controversial question.

LAW SOCIETY'S FINAL EXAMINATION, 1956

[We are indebted to the Law Society for permission to reproduce the following papers set by the Society in connexion with the Final Examination held on June 20, 1956 (time, 2.30 *p.m.* to 5.30 *p.m.* in each case).—*Ed., J.P. and L.G.R.*]

A(3)—Local Government Law and Practice

(*Questions* *61, *62, *and* *63 *are compulsory.*)

*61. The Ayton U.D.C. are unwilling to provide a sewerage scheme for their district, although it is urgently and patently necessary. You are consulted by a ratepayer who wishes to know what action he can take to remedy matters. Advise him.

*62. How is an urban district made into a borough?

*63. What authorities are required to provide accommodation under the National Assistance Act, 1948? In what cases are they required to provide it? What government grants are available to them?

(*Answer seven and no more of the following questions.*)

64. Who owns a highway repairable by the inhabitants at large?

65. In the county borough of Beeton there is a badly laid-out area of about 10 acres, part of which consists of overcrowded and congested working-class houses, and part of reasonably well-maintained property. What can the borough council do about it?

66. Can the Loamshire county council delegate to the council of a borough in the county their duty of providing an ambulance service?

67. What different kinds of grants are payable to local authorities? Give examples.

68. What persons are entitled to be registered as local government electors in a county borough?

69. What are the rules of natural justice applicable when a local authority is required to act in a quasi-judicial way?

70. The Statutory Instruments Act, 1946, set out various standard procedures for ensuring the control of statutory instruments by Parliament. What are they? Describe the procedures.

71. Jones, a shopkeeper, is a member of the Orley parish council and of the Barsetshire county council. He recently went to the county town, 10 miles from his home, for a county council sub-committee meeting, being away from home for three hours. The next day he again visited the county town, on the instructions of the parish council, to consult with their solicitors about the proposed acquisition of some land by the parish council. This also took three hours. He has no assistant, and his shop had to be closed on each occasion. To what allowances is he entitled?

72. Your client, Smith, a district councillor, has just been surcharged by the district auditor. How may he have the surcharge remitted? If he fails, how may the surcharge be enforced against him, and by whom?

A(1)—The Practice of Magistrates' Courts, including Indictable and Summary Offences; Matrimonial Jurisdiction, Bastardy, Juvenile Courts, Treatment of Offenders, Civil Jurisdiction, Collecting Officers' Duties, The Issue of Process, Evidence in Criminal Cases, and Licensing.

(*Questions* *61, *62, *and* *63 *are compulsory.*)

*61. X appears before a magistrates' court, having been summoned in respect of the following offences—(*a*) driving a motor car when disqualified for holding a licence. (For this offence he is liable on summary conviction to six months' imprisonment or, having regard to the special circumstances of the case, to a fine of £50, or both); (*b*) taking and driving away a motor car without the owner's consent. (For this offence he is liable on summary conviction to three months' imprisonment or to a fine of £50; he may also be convicted on indictment); (*c*) using a motor car on a road without being insured against third party risks. (For this offence he is liable on summary conviction to a fine of £50 or to three months' imprisonment or both.) X states that he wishes to be tried by a jury. How would you advise the magistrates?

*62. Draw an application by a man for the reduction of the sum payable under a bastardy order, using imaginary particulars.

*63. An adult is charged with unlawful carnal knowledge of a girl aged 15 years. Section 39 of the Children and Young Persons Act, 1933, provides that a court may direct that no newspaper report of the proceedings shall reveal the name or other identifying particulars of a young person concerned in proceedings of this nature. What procedure should be adopted to implement this provision?

(*Attempt seven and no more of the remaining questions.*)

64. Herbert, the holder of a provisional driving licence, has failed his driving test. He wishes to appeal to a magistrates' court. What procedure should be followed? How far may the court inquire into the findings of the examiner and what order may the justices make?

65. The King's Arms is a small house for which a justices' on-licence is in force. The public rooms consist of a bar and a lounge. The owners propose to alter the premises in the following respects—(*a*) by demolishing the dividing wall so that the bar and lounge become one room; (*b*) by moving the entrance door from the front of the premises to the side; (*c*) by providing improved sanitary arrangements in accordance with the desires of the sanitary authority.

They wish to proceed with these alterations without delay. Advise them how far (if at all) the consent of the licensing justices will be required.

66. When a magistrates' court has imposed a fine on a summary conviction, in what circumstances is the clerk of the court required to notify the defendant thereof by written notice. What are the consequences of failure to fulfil this requirement?

67. In January, 1956, the P magistrates' court on the complaint of a police officer ordered that the AB club of 10 High Street, P, be struck off the register of clubs and further ordered that the premises 10 High Street should not be used for the purposes of any registered club for a period of 12 months. Since this order, the members of the former club have remained in association. They now propose to form the XY club. Advise whether the XY club may be registered under the Licensing Act, 1953, even though it is composed of the former members of AB club. It is further desired that the XY club should occupy 10 High Street. What steps may be taken to this end?

68. Samuel was placed on probation at R quarter sessions. The order required that he report to a probation officer appointed for the petty sessional division of X, as directed. He has failed to comply with this requirement. What proceedings may be taken against Samuel and what orders may be made in a magistrates' court?

69. Mrs. Lewis has obtained a maintenance order against her husband in a magistrates' court. Subsequently the parties are divorced on the ground of desertion. The magistrates' maintenance order is not affected thereby. Thereafter, Lewis obtains information that his former wife is cohabiting with a man named Williams. Lewis wishes to terminate his liability for the maintenance of his former wife. What proceedings may he take in the magistrates' court?

70. Mr. and Mrs. Brown propose to adopt Sheila through the agency of an adoption society. They desire that their identity should be kept confidential. Their application is accompanied by a form of consent signed by Sheila's mother. Prior to the hearing of the application, the mother notifies the clerk to the justices concerned that she desires to withdraw her consent. She attends before the justices and explains that she now objects to the adoption because she has not been informed of the identity of the applicants. She is apprehensive that if the adoption takes place she will lose all contact with Sheila. Advise the justices whether the mother's objection will prevent the making of an adoption order.

71. Roberts has been charged by the X police with unlawfully wounding Kay in the county borough of X on January 2. Roberts applies to a justice at X for an assault summons against Kay. He states that the assault occurred a few miles from X on January 1 and that the incident on the following day was a sequel thereto. He desires that the proceedings for assault should be heard at X. Advise

the justice whether he has jurisdiction to issue the assault summons.

72. Edna has issued an affiliation summons against James but her complaint has been dismissed. Three weeks later she writes to the clerk to the magistrates' court concerned stating that she has obtained further evidence and that she wishes to appeal against the justices' decision. What action should be taken by the clerk? What advice might be tendered to Edna regarding the alternative remedies open to her?

THE HOME SECRETARY AND THE POLICE

The Home Secretary (Major Gwilym Lloyd-George) in addressing the recent annual conference of the Association of Chief Police Officers at Folkestone referred to the way in which the police tackled the problems created by the railway strike last year and said that their achievement then gave hope that means could be found to provide an effective solution to many of those traffic difficulties which now exist. He said modern conditions are such that an increasing amount of time must inevitably be devoted by the police to promoting safety on the roads and keeping them free from congestion. He saw no prospect of any lightening of their burden in this respect, present prospects were that it would grow heavier and at a time when, as a result of the introduction of the reduced working hours, existing police strength went rather less far than before. He was glad, however, that the hours of the members of the federated ranks had been reduced from 48 to 44 a week and that this would be effected by the grant of an additional rest-day every fortnight.

Major Lloyd-George said the number of traffic offences taken to court continued to increase. Over 400,000 persons were found guilty in 1955. As to the strength of the Force he said this had risen by over 800 men in four months and at April 30 had reached a total of 64,592 men and 2,116 women—the highest total to be achieved since the war. As a further help the Army Council had agreed that police officers who are national service reservists shall no longer be required to undertake part-time military training.

The question of police manpower was also raised in an adjournment debate in the House of Commons on June 8 when it was suggested that the range of duties now undertaken by the police might be reduced, particularly in connexion with traffic control. It was suggested, further, that there should be a special corps of traffic police who would be different in their training and qualifications from the ordinary police constable. The Joint Under-Secretary for the Home Department (Mr. W. Deedes) in replying to the debate said the introduction of reduced working hours for the federated ranks had checked immediately the serious loss of manpower caused by men leaving the police force after some years of service but long before the age of retirement. As to the duties undertaken by the police Mr. Deedes said there had been some reduction in their extraneous duties. In order to promote efficiency greater use was being made of wireless and he mentioned that a wireless set had been produced which had been found suitable for use on motor cycles. A number of sets had been installed. The introduction of motor scooters had helped in some areas to compensate for the effect of the 44 hour week.

MAGISTERIAL LAW IN PRACTICE

The Star. July 2, 1956

HYDE PARK GIRL TOLD "PRISON IF—"

When told at Marlborough Street today that Mrs. Brenda Hill, 19, of Pembridge Gardens, Paddington, who pleaded guilty to soliciting in Hyde Park, had been arrested at 2.30 p.m., the magistrate, Mr. Paul Bennett, V.-C., did not impose the usual maximum fine of 40s. but ordered Mrs. Hill to find a surety in the sum of £25 for her good behaviour for 12 months.

Fixing an alternative of one month's imprisonment he commented: "If I can, I am going to put a stop to soliciting in broad daylight in our best streets and parks."

In this case the learned magistrate sitting at Marlborough Street, Mr. Paul Bennett, V.-C., ordered the defendant to find a surety in the sum of £25 for her good behaviour for 12 months, or to be imprisoned for one month in default, although the maximum penalty for the offence with which she was charged is a fine of 40*s*.

In *R.* v. *Sandbach, ex parte Williams* (1935) 99 J.P. 251, the learned magistrate then sitting at Marlborough Street, Mr. J. B. Sandbach, K.C., convicted a man of obstructing a police constable in the execution of his duty, and ordered him to enter into a recognizance for his good behaviour in the sum of £20, with two sureties in the sum of £10 each, or in default to undergo a sentence of two months' imprisonment, although the maximum penalty for the offence of which he was convicted is a fine of £5. It was held by the Divisional Court on an application for an order of *certiorari* that a magistrates' court has power to order a defendant to enter into a recognizance and to find sureties for his good behaviour if the court apprehends that the defendant will do something contrary to the law, although there is no apprehension of violence towards any person and although the defendant will become liable, in the event of a forfeiture of the recognizance, to a penalty greater than that which has been fixed by statute for the particular offence of which he has been convicted.

Newcastle Journal. June 27, 1956

"I CAN PAY £19 IN 30 YEARS"—SOLDIER

A 20 year old soldier, Pte. Hubert Coyne, of the Royal Inniskilling Fusiliers, told Chester-le-Street magistrates yesterday that he could pay a £10 fine and £9 5s. 5d. costs for unlawful wounding "in about 30 years."

Coyne, stationed at Warminster, said he was serving 112 days' detention, and when advised by the deputy clerk, Mr. B. Sanders, to make a "more reasonable" offer, he said he did not know when he could pay.

Coyne and his brother Martyn (25), of Pringle Place, New Brancepeth, admitted a joint charge of wounding Joseph Feenan, a coal hewer, of Pemberton Terrace North, Craghead. A third brother, Thomas (22), of Rutland Square, Birtley, did not appear and a warrant was issued for his arrest.

Mr. V. H. Jackson, prosecuting, said that one of the three brothers threw a glass of beer at Feenan and later he was hit in the face with a glass and kicked while lying on the ground.

Det.-Con. E. Maugham alleged that in a statement, Hubert said: "It was me who started it."

Martyn was also fined £10 with £9 5s. 5d. costs and then offered to pay his brother's amount. He was allowed six months to pay.

Under s. 138 (7) of the Army Act, 1881, fines, penalties, damages, compensation, or costs may be recovered from a soldier's pay. That provision also applies to the Air Force. It will be replaced by s. 146 of the Army Act, 1955, and s. 146 of the Air Force Act, 1955, when those statutes come into force on January 1, 1957 (S.I. 1955 Nos. 1805–7).

The Home Office issued circulars to justices' clerks on the recovery of fines imposed on soldiers on May 2, 1917 (*see* 81 J.P.N. 185) and July 14, 1923 (*see* 87 J.P.N. 552). The practice referred to in the circular of 1923 is generally adopted. The officer, who is usually in attendance when a service man is before the court, is prepared to pay the fine forthwith, and the fine is then recovered from the man by deductions from his pay.

Liverpool Daily Post. June 11, 1956

ASSAULT ON POLICEMAN

Sentence of four months' imprisonment was imposed at Rhyl court on Saturday on Frank O'Connor, aged 42, of 83 Farnworth Street, Liverpool, when he was found guilty of assaulting a policeman and of being drunk and disorderly in Rhyl the previous evening. He pleaded not guilty to both charges.

Constable W. Thomas said that when O'Connor bit one of his fingers blood was drawn.

In court O'Connor denied that he was drunk, and stated that he was trying to defend himself against another man.

It was stated that there were previous convictions against O'Connor for theft and other offences dating back to 1925.

He was sentenced to three months' imprisonment for assaulting the policeman, and one month for being drunk and disorderly, the sentences to run consecutively.

Mr. D. W. Jones (chairman), said that the magistrates had taken into consideration a breach of a conditional discharge granted at Prestatyn in April for loitering with intent to commit a felony.

In this case the magistrates at Rhyl, in dealing with a breach of a conditional discharge at Prestatyn, under s. 8 (7) of the Criminal Justice Act, 1948, did so by taking it into consideration. They should have passed a separate sentence. In *R.* v. *Webb* [1953] 1 All E.R. 1156; 117 J.P. 319, Lord Goddard, C.J., said: "It is undesirable, and, indeed, wrong to take breaches of probation or of conditions of discharge into consideration. They should be separately dealt with and separate sentences passed so that the original offences may rank as convictions, as they will by virtue of the proviso to s. 12 (1). There may be cases in which a court would think fit to make the sentences for the original and subsequent offences concurrent, but it would seem desirable that this power should only be used exceptionally. It is most important that an offender should be made to realize that discharge, whether on probation or conditionally, is not a mere formality, and that a subsequent offence committed during the operative period of the order will involve punishment for the crime for which he was originally given the benefit of this lenient treatment."

The desirability of passing a separate sentence for the original offence is also pointed out in *R.* v. *Fry* [1955] 1 All E.R. 21; 119 J.P. 75.

REVIEWS

Ryde on Rating. Tenth Edition. By Michael R. Rowe, Harold B. Williams, William L. Roots and David Widdicombe. London: Butterworth & Co. (Publishers), Ltd. Shaw & Sons, Ltd. Price £5 10s. net.

It is 56 years this month since the preface to the first edition of this work was signed by its original author. From the first it has occupied a unique position. The present senior editor became associated with it in 1930 and, despite great changes in the statute law since that time and two editions before this since the second world war, continuity of treatment has been retained. The ninth edition was made necessary in 1950 by the Local Government Act, 1948, and the present edition by the Valuation for Rating Act, 1953, and the Rating and Valuation (Miscellaneous Provisions) Act, 1955. The learned editors seem to indicate in their preface that modernization of the work will have to go further than has been possible in this tenth edition, but even here the changes have had to be far reaching. The fundamental problem has been to keep the balance of a structure in which foundations have remained essentially unaltered, while much of the edifice built on them by earlier statutes and decisions has been pulled to pieces and re-erected in a different shape. This problem has been faced, and skilfully surmounted. In the first place, the former parts II and III which dealt with valuation have been combined, and rearranged under the rubric "The Measure of Liability," which formerly covered only the headings of net annual value and rateable value. The new part II, comprising more than 450 pages, constitutes the backbone of the book. Part I, entitled "Liability and Non Liability to Rates" has been less changed in outward form, but the Rating and Valuation (Miscellaneous Provisions) Act, 1955 (in particular), has had a wide effect upon the valuation or the rating of several kinds of property here dealt with, and the changes of substance in part I are accordingly substantial.

Part III, entitled "Practice and Procedure," has required a good deal of rewriting, by reason of the Act of 1955, even though it was the Act of 1948 which set up the new machinery. The differences between London and provincial rating are explained, and then the mode of making and altering valuation lists. This part includes appeals from the valuation courts and Lands Tribunal, with a final chapter on appeals from quarter sessions. Among matters to be noticed are the transitional provisions about the amount to be recovered where a proposal to alter the new valuation has been made.

Part IV comprises the recovery of rates and the rating of owners instead of occupiers, and does not call for comment. This, like the old part V, is comparatively short. We should like to suggest to the editors and publishers that many local government officers and clerks to justices would appreciate fuller treatment of the enforcement of rates than *Ryde* has given, in this and earlier editions. This is an aspect of the subject which produces a good many of our Practical Points, and an aspect upon which (it has seemed to us for some time) *Ryde* might give more guidance.

Turning back to the beginning of the book, we find a general introductory chapter, tracing the present law to the Poor Relief Act, 1601, and emphasizing the principle that a rate is a personal charge and not a tax on land, a principle which remains true in spite of all the recent changes, of which the most important are summarized in the same chapter.

Chapter 2 explains the rules by which occupation is determined, and the manner in which those rules are applied to ordinary and some extraordinary property. The railway cases under the Railways (Valuation for Rating) Act, 1930, which decided several issues arising at London termini and other large railway premises, still hold good for some properties subject to special methods of assessment, as well as for ordinary property, and the essential facts of those cases with extracts from the judgments are set out. Still within part I, we find the application of the rules for deciding whether property is occupied and by whom, as applied to a variety of different premises and states of fact.

In part II, now renamed "The Measure of Liability," the first chapter deals with net annual value. This part of the book goes on to explain the contractor's basis and the profits basis, for valuing special kinds of property, which are still important, despite the new statutory bases of contribution in some cases. It deals with railway property, tithes, and other matters, with reasonable particularity, giving all necessary extracts from judgments of the courts. Separate chapters are devoted to the new statutory bases (just mentioned). Whilst this part can be regarded almost as a handbook in its own right, to the new law of valuation (in principle, apart from procedure which comes later) it contains some penetrating analysis of old decisions also: decisions which have acquired a new importance in relation to public parks and recreation grounds—species of property where, in our opinion, exclusion from rating has in recent years been carried further than can be justified on principle.

We have not yet had time to test the new edition fully in practice, but have looked into it at a number of points where we have already had queries or where we knew that there was or might be doubt—particularly upon the application of the newest statutory enactments. So far as we can tell at present, the learned editors have foreseen the points likely to arise. No member of the legal profession who did much rating work would attempt to do without his *Ryde*, and rating authorities, even though valuation has been taken out of their hands, will need to provide the new edition for their staffs who have to deal with rating. The subject matter has grown more technical, as Parliament interfered in so many different ways with the fundamental principles which the work set out to explain at the beginning of the century. This results in a jungle which the unaided layman can hardly hope to penetrate, but the subject is of increasing importance in an inflationary period; many laymen wish to know more about it, and we think the book ought to find a place in public libraries, as well as in professional offices.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

DUFFEL/DUFFLE COATS

I note in your journal of June 30, the advice given in respect of the spelling of a name given to what is now rather a famous garment.

Whether it be "Duffle" or "Duffel" appears to me to be entirely a question of fact and also of law. I would submit that a coat made of "duffel" cloth, from the village of that name, could only thus be described.

A coat actually manufactured elsewhere of other than "duffel" cloth could and should only be described as "duffle." Otherwise, I suggest an offence may be committed against the provisions of the Merchandise Marks Acts.

Yours faithfully,
R. BILLINGS.

Weights and Measures Office,
Greenbank Road, Plymouth.

The Editor,
Justice of the Peace and
Local Government Review.

From: The Lord Derwent.

SIR,

A CURE FOR TRAFFIC CONGESTION

I think it is possible that many of your readers in civic authority circles may not have fully appreciated the significance of an international conference which the British Road Federation is holding at Friends House, London, from September 18 to 20.

Most cities in this country are grinding to a standstill because of our inability to appreciate the implications of the motor vehicle. We have still not fully awakened to the costly truth that we are faced with two alternatives: To let the mounting waste of drivers' time and vehicle potential become even greater, or to provide our towns and cities with modern highways particularly those which separate local from longer-distance traffic.

This conference, on urban motorways, the first of its kind, has brought enrolments from no fewer than 16 countries, ranging from Peru to Japan, because traffic stagnation is a world-wide disease. The Minister of Transport will open it, and revelations about the beneficial effects of urban motorways on traffic problems are likely to have far-reaching effects subsequently on roadworks here and overseas.

Though the conception of motorways through built-up areas may be too much for the mind of the man-in-the-street, it is part of things to come and therefore of vital importance to civic leaders responsible for highway administration.

Scores of highway committee members and engineers have already enrolled, but we would like our many overseas delegates to meet an even larger number of enlightened delegates from British local authorities.

Yours faithfully,
DERWENT.

British Road Federation, Ltd.,
26 Manchester Square, W.1.

FIRE AND SERPENTS

Those magnificent fellows, the firemen of Great Britain, have developed out of all recognition since the days (not so very long ago) when their predecessors were the private care and responsibility of the individual insurance offices which organized, financed and staffed their ranks. Some of those offices are well over two centuries old. The Royal Exchange Insurance Office announced the establishment of its fire-fighting personnel and equipment in 1722, and others in later years followed suit. It is strange for us today to imagine the firemen of the eighteenth century, called out to deal with some urban conflagration, peering up at the walls of a burning building to see that the badge of their company was displayed thereon as evidence that the occupier was a policy-holder and had paid his current premium. It was not long, we may be sure, before experience began to teach them that strict adherence to protocol was the road to disaster, and that safety lay in co-operation. But not until 1833 did the insurance offices co-operate, in a practical manner, to form the London Fire Engine Establishment which, with only 76 officers and men, took over the entire fire protection of London. A year later the Houses of Parliament were burnt down, and in 1861 occurred the great conflagration in Tooley Street, near London Bridge, which caused damage estimated at £1,200,000. The following year a Parliamentary Committee of Inquiry found the existing arrangements to be totally inadequate; in 1865 the Metropolitan Fire Brigade Act provided for the transfer of the fire-stations, equipment and other property of the London Fire Engine Establishment to the Metropolitan Board of Works. The insurance offices continued, and still continue, to make an important contribution to the cost.

There have been many changes, in London and the Provinces, since that date. Vast organization, on a national scale, was required to cope with and limit the trail of destruction laid by enemy aircraft during the Second World War. In those momentous years the gallant members of the National Fire Service faced perils as great as, and often greater than, those which the Armed Forces were called upon to tackle; today authority is still busy with the task of keeping this branch of Civil Defence on an adequate footing, ready for any emergency. The development of urban aggregation, coupled with the enormously increased destructiveness of aerial weapons, has conferred upon the fire-fighting services an unprecedented distinction among national institutions.

All this would have seemed very odd in our grandfathers' days. As recently as 1882 the appointment of the Chief of the London Fire Brigade was the occasion for good-humoured satire from the pen of W. S. Gilbert, who immortalized that hard-worked officer in *Iolanthe*. It is the Queen of the Fairies who draws the parallel between his functions and those of the legislature of her own realm:

> " We must maintain our fairy law;
> That is the main on which to draw!
> In that we gain a Captain Shaw."

And her fairy subjects acknowledge the analogy in loyal chorus:

> " O Captain Shaw!
> Type of true love kept under!
> Could thy Brigade with cold cascade
> Quench my great love, I wonder? "

At the beginning of the present century Hilaire Belloc poked sly fun at " London's noble Fire Brigade," in his Cautionary Tale of Matilda, who told such Dreadful Lies and was Burned to Death in consequence.

Burlesque and caricature are the privilege of the satirist, but even in real life the fireman's vocation has its lighter, or at any rate its unconventional, side. He has other, more prosaic, though no less useful, duties than those which speed him, through the city thoroughfares, excitingly clad in tunic, thigh-boots and helmet, like some apocalyptic image in a poem by William Blake—serpentine hose coiling, wheels whirring and bells clanging in his Chariot of Fire. There are the routine duties of the fire-station-drill, " spit and polish " and domestic " chores." There are the false alarms, which have to be answered no less promptly and alertly than those that prove real. And there are the miscellaneous calls that fall to the firemen's lot —to rescue a would-be suicide or a temerarious climber from some narrow ledge at a dizzy elevation above the street; to release a man accidentally immured in a strong-room, or a small boy who has unaccountably got his head wedged between two railings; even, on occasion, to entice a terrified cat from the topmost branch of a tree it has too boldly scaled. These are some of the tasks—humanitarian, public-spirited and vital—that the present-day fireman must carry out, readily, selflessly and with good humour.

That the above enumeration is far from exhaustive has been recently shown by a report from *The Times* correspondent in Derby. There the county fire brigade was called out by a local housewife to perform a task which must be almost unique in the annals of the service. The purpose for which their aid was requested was to capture a six-foot boa-constrictor which was roaming at large in her kitchen and was alleged to have bitten her twice on the arm " while she tried to return it to its box." True to their traditions, the gallant firemen placed action before argument, and caught and immobilized the creature within a matter of 20 minutes. Not unnaturally, they felt they were entitled to some explanation for the presence of so unusual an object in a place generally reserved for domestic *impedimenta.* It then appeared that the lady in question keeps snakes as other people keep cats and dogs; she had also a " South American cannibal snake " on the premises, and the boa-constrictor had been sent to her, by request, as an addition to her collection.

For the Derbyshire Fire Brigade such episodes are all in the day's work. They admitted that this was the first emergency call of the kind they had ever received, and in consequence explained, apologetically, that they " had no charge listed for this type of special service." The question whether any and, if so, what charge would eventually be payable would be considered by the special services committee at its next meeting. It is good to have, on the one hand, the assurance that such *fauna* are not indigenous to, or generally liable to infest, the countryside of Derby; it is still more reassuring, on the other hand, to know that the county fire brigade is equal to any such emergency. Like the White Knight who carried a mousetrap on his horse's back, they would maintain that " It's as well to be provided for *everything*." That resourceful character agreed with Alice that it was not perhaps very *likely* that there would be any mice on the horse's back, observing, however: " But, if they *do* come, I don't choose to have them running all about." The appearance of a boa-constrictor in the kitchen is a probably remote contingency of a similar kind, and it is a great comfort to know that the knights-errant of the fire brigade are not caught unprepared.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Child born two months after divorce—Consent of former husband.*

Mr. and Mrs. M have applied to my justices for an adoption order in respect of a child born to a woman Mrs. X two months after she had been divorced by her husband Mr. X on the grounds of adultery with a named corespondent. The decree was made absolute on July 2, 1955, and the child was born on September 4, 1955. The birth certificate shews Mrs. X as the mother, but a blank in the space for the father's name, from which it was presumed that Mr. X was not in fact the father.

I have considered P.P. No. 1 of August 28, 1954, p. 554, and P.P. No. 1 of December 4, 1954, p. 772, and also in *re Heath* (1945) Ch. 417 and *re Overbury* [1954] 3 All E.R. 308.

Would you please advise me:

1. Whether the consent of Mr. X is necessary for the purposes of the adoption, and/or

2. Whether if the putative father of the child has contributed to its support his consent is necessary.

3. Generally as to the evidence that will be required.

T.A.B.C.

Answer.

1. There is a strong presumption in law that the child is legitimate, and so Mr. X should be made a respondent to the application and his consent sought. If he gives consent, no difficulty arises. If he refuses, without denying the paternity, the court will have to consider whether his consent can be dispensed with in accordance with s. 3 of the Act. If he denies paternity, both he and Mrs. X can give evidence about it, and if the court is satisfied that he is not the father, there is no longer any need to seek his consent.

2. No, his consent is not necessary unless he is bound by order or agreement to contribute. He is not a parent within the meaning of the Act, *Re M* (*an infant*) [1955] 2 All E.R. 911; 119 J.P. 535.

If the court thinks that the putative father ought to be heard it can make him a respondent by virtue of r. 9 (*d*) of the Adoption of Children (Summary Jurisdiction) Rules, 1949, as substituted by the Rules of 1952.

3. If the paternity is in dispute reference should be made to the case of *Cotton* v. *Cotton* [1954] 2 All E.R. 105.

2.—Criminal Law—*Larceny—Compensation to prosecutor—Subsequent restoration of property.*

I should be much obliged by your opinion on the following rather interesting point for which I think there is no authority.

A was convicted by my justices of the larceny of a watch valued £30 the property of B. A stated that he had hidden the watch in a hedge, but evidence was given at the trial that in spite of an exhaustive search by the police the watch could not be found. A was fined and the court also ordered him to pay to B £3 in part compensation for the loss of the watch. A applied for time to pay and was allowed to pay the fine and £3 by instalments of 10*s.* per week. The whole of the amount has now been paid except £1. The watch was recently found by some workmen in the place where A said he had hidden it, but, from its condition, it is obvious that it had only just been put there. A now inquires whether he has to pay the balance of £1 to B.

My view is that the watch must, of course, be handed to B and that the magistrates have no power to alter their order with regard to the payment of the £3 by A to B. Do you agree with this view? If you do not, what authority is there that the justices can now alter their original order? SAFTES.

Answer.

We agree with our learned correspondent that the court cannot vary its order. We may add that even on the merits there appears to be no reason for doing so. The order was evidently made under s. 4 of the Forfeiture Act, 1870, as a measure of compensation to B for the loss of his property. The loss has proved not to be permanent, but B may have had to incur expense in buying another watch, and the stolen watch is likely to need attention. He is out of pocket through its loss, even though it has come back to him.

3.—Housing Act, 1949—*Improvement grants—Rent.*

The owner of a three-bedroom house constructed in 1931 and let at a controlled rent of 11*s.* 6*d.* per week has applied for an improvement grant in respect of the proposed installation of an internal hot water system. The approved expense is £140 and the grant £70. The council has fixed a maximum rent in accordance with the Housing Act, 1949, as amended, at £52 per annum which replaces the previous controlled rent. The landlord cannot carry out improvements without the tenant's agreement, and no doubt a lesser rent than the maximum will be agreed between them.

(*a*) In your view should the maximum rent have been less in view of the cost of the improvements, although the house is quite modern in all other respects?

(*b*) Will the owner be able to charge the tenant the maximum rent subsequent to the execution of the improvements? PEBEA.

Answer.

(*a*) The maximum fixed appears to be high in view of the small expense.

(*b*) Not unless he can charge it under the Rent Acts. The maximum is only a limit, and is not a right.

4.—Husband and Wife—*Maintenance order—Subsequent divorce on ground of wife's desertion—Discharge of maintenance order.*

On a wife's petition for divorce on the ground of cruelty the court found the allegations unproved and rejected the petition and granted the husband a decree on his cross-petition on the ground of desertion. The husband then sought the discharge of a magistrates' order which had been made against him some time before the commencement of the divorce proceedings on the ground of wilful neglect to maintain. On the husband's application to discharge such order the magistrates held they had no power to discharge the order and could only vary the same upon evidence of change of means, saying that the reason was that the husband had obtained his decree upon desertion and not upon adultery. It might have been different if the wife had remarried. The order must continue in force. Will you please advise:

1. In your view are the magistrates wrong in law?

2. If so, what is your authority for that proposition?

3. Do you not think that a decision of a superior court is conclusive, and is fresh evidence upon which the magistrates should (not may) discharge the order?

4. If you do not think the magistrates wrong in law, why not?

S. LEX.

Answer.

We do not understand why the justices appear to have thought they had no power to discharge, but only to vary the order. They could do so either under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, or s. 53 of the Magistrates' Courts Act, 1952. We consider they were wrong in law if they held they had no power. In our opinion the justices were bound by the decision of the High Court that the wife had deserted her husband, divorce having been granted on that ground, and for that reason the wife was not entitled to further maintenance under the order, *Winnan* v. *Winnan* [1948] 2 All E.R. 862; *National Assistance Board* v. *Wilkinson* [1952] 2 All E.R. 255; 116 J.P. 428; *National Assistance Board* v. *Prisk* [1954] 1 All E.R. 400; 118 J.P. 194. The fact of the divorce is "fresh evidence."

5.—Justices' Clerk—*Fees—Recognizance—By whom fee payable.*

Recently after a hearing before the examining magistrates the accused was committed for trial, and a recognizance of bail and notice to the accused and his sureties were prepared in the usual way. The solicitors acting for the accused have been asked to pay the appropriate fees set out in the table of court fees in sch. 4 to the Magistrates' Courts Act, 1952 (*see Stone*, Vol. II, 1955, p. 2656). The solicitors concerned have stated that these fees, in their view, are not payable by the accused. The Act simply states that the fees are payable, but makes no provision as to who shall pay them. Over a period of many years we have always taken the view that, like copy depositions for example, these services are supplied for the benefit of the accused, and must be paid for accordingly. It would seem rather extraordinary if one could put the cost on the prosecutor for a service rendered for the benefit of the accused person. We shall be glad to know if you agree.

STEBUR.

Answer.

We agree that the fees are not payable by the prosecutor. A person who enters into a recognizance in connexion with bail is the proper person to pay the prescribed fee.

6.—Licensing—*Removal—Premises to be pulled down for a "public purpose"—Whether ordinary or special removal appropriate.*

The local authority has declared a certain area within a borough in my justices' petty sessional division a clearance area under s. 25 of the Housing Act, 1936. Adjoining this clearance area is a public house in respect of which there exists a full justices "on" licence.

Obviously a well maintained public house could not be included in the clearance area, which must be limited to buildings unfit for habitation.

For the purposes of s. 27 of the Housing Act, 1936, the local authority have resolved to acquire, *inter alia*, the public house from the brewers as being " reasonably necessary etc. " and the Minister of Housing has given consent to its purchase by negotiation under s. 27 and s. 29 (i) of the Housing Act, 1936. A provisional contract for sale has in fact been entered into by the brewers and the local authority. I am informed by the local authority that the public house would be demolished not earlier than a year and not later than two years from now.

The brewers now wish to apply to the licensing justices for a removal of the justices' licence to new premises to be erected some two or three miles away on land agreed to be purchased from the local authority on its housing estate.

On behalf of the brewers, it is contended that the circumstances before related are such as to bring the matter within the scope of s. 24 (3) of the Licensing Act, 1954, as a special removal, and in such an event there would be no monopoly value chargeable. My own feeling is that s. 24 (3) contemplates a compulsory acquisition by a local authority rather than acquisition by mutual agreement. In other words the provisions relating to special removals should only be invoked where there is some urgency, such as buildings about to be pulled down for road improvements and the like.

I shall be grateful of your opinion as to whether the conditions to support a special removal do exist in this case. NUNS.

Answer.

The first thing to observe is that no monopoly value is payable on the grant of a removal—whether ordinary or special. Thus, on the monopoly value issue, there can be no preference for one form of removal over the other.

In our opinion, the acquisition of premises by a local authority with the intention that they shall be pulled down for a public purpose is a proper case for special removal (Licensing Act, 1953, s. 24 (3) (*a*)).

But, in the case in point, it seems that the premises to which it is designed to remove the licence have not yet been constructed. Licensing law contains no power to make a provisional grant of a special removal: the removal must be to premises fit and convenient for the purpose (Licensing Act, 1953, s. 24 (5)). There may be a provisional grant of an ordinary removal (Licensing Act, 1953, ss. 25 (5), 10) and application for such a grant would seem to be appropriate in this case.

7.—Public Health Act, 1936—*Properties in one ownership—No outlet to drain.*

A nuisance under the Public Health Act, 1936, exists as a result of a defective cesspool or sewage tank, permitting effluent and solids to pollute a ditch which drains into a pond. It is contended by the owners of the property that liability to maintain this cesspool is the council's, by virtue of the provisions of s. 20 of the Public Health Act, 1936. The six cottages are in one ownership and are drained to the cesspool. No positive evidence can be produced to show when this line of pipe or cesspool was constructed, but it is believed to be towards the end of 1934. I am cognizant of the case of *Meader* v. *West Cowes L.B.* (1892) 67 L.T. 454. PRACKLE.

Answer.

In our opinion the cesspool is not part of the so-called sewer. Whether the status of the pipe is that of a sewer may be arguable. If the case is contested, the council will have to find how the system came into existence. Meantime you may find it useful to look at our article at 119 J.P.N. 442, where we considered the *Cowes* case and others.

8.—Public Health Act, 1936, ss. 15 and 23—*Access to and maintenance of sewer—Covering of manholes.*

In 1945 the council laid a sewer through private land in accordance with the provisions of s. 15 of the Public Health Act, 1936. Under s. 23 of the Act the local authority is responsible for maintaining the sewer, and presumably for this purpose have a right of access. The present owners of the land through which the sewer runs have, by means of tipping, raised the level of the land and two manholes on the sewer have been covered by 8 *ft.* of soil. Does the action of the landowner infringe the local authority's right of access to the sewer and can action be taken against the landowner with a view to the council having access to the manholes? P. DITHER.

Answer.

For the right of access implied by s. 23, *see Birkenhead Corporation* v. *L. & N.W.R. Co.* (1885) 50 J.P. 84, though the right there held to exist by implication arose under other statutes. Comparing the facts in that case and the present, we doubt whether the landowner would have been prevented from covering the manholes with soil.

9.—Water—*Waste—Byelaws—Owner or consumer liable.*

The corporation intend to take proceedings under s. 17 of the Waterworks Clauses Act, 1863, for a serious waste of water on certain premises in the town which has continued since September last. Notices have been served on the owner drawing her attention to the waste on the premises, which are let to the local branch of a political party. No such notice has been served on the political party, but it now appears that they as tenants pay the rates on the property and appear in the rate book as " The ——— Party." In view of this it appears that proceedings should be taken against the tenants, having regard to *Brock* v. *Harrison* (1899) 1 Q.B. 958 and *Deeley* v. *Caink* (1923) 87 J.P.N. 765, and not against the owner.

Your opinion is sought on the following points:

1. Is it material that no notice has been served on the tenants? (The water inspector has on two visits to the premises drawn the attention of the secretary to the waste.)

2. If proceedings are begun against the tenants, against whom should information be laid? Would it be sufficient for example to use the expression "the committee of the local branch of the —— party."

3. Byelaw 2 made under s. 17 of the Water Act, 1945, reads:

A person shall not, for the purpose of conveying, delivering, receiving, or using water supplies by the undertakers—

(*a*) use any water fitting which is of such a nature or is so arranged or connected as to cause or permit, or be likely to cause or permit, waste, undue consumption, misuse, erroneous measurement or contamination of water, or reverberation in pipes;

(*b*) use any water fitting which is not in accordance with such of the particular requirements of these byelaws as may be applicable to it; nor

(*c*) arrange, connect, disconnect, alter or renew any water fitting in contravention of any requirement of these byelaws.

Could the owner be prosecuted under this byelaw? P. CYCLOPS.

Answer.

1. No, in our opinion.

2. Proceedings should be taken against the persons supplied. Proceedings against some or all of the members of the committee should be sufficient; we think they should be made defendants individually, not as a committee.

3. No, in our opinion. She is not using the fittings or the water or making arrangements, etc., contrary to the byelaws.